

REMARKS

The Examiner has objected to the Abstract as several formal grounds. Applicant has amended the Abstract and therefore, this ground of objection should be withdrawn.

Claim 17 stand rejected under 35 U.S.C. 112. This ground of rejection is moot since claim 17 has been canceled without prejudice.

In the outstanding Office Action, the Examiner has rejected claims 11-21 as being unpatentable over Neubauer in view of Fisher.

As described in the present specification (e.g., paragraph [0031]), the bent blades are rigid enough to maintain upper surface (25) of plate (24) pressed against lower surface (38) of opening (36), with the free ends of the bent blades bearing against upper surface (39) of the opening (36). Bent blades have a sufficient stiffness to provide a sufficient force opposing to a displacement of plate (24) inserted in opening (36) tending to push away lower surface (25) of plate (24) from lower surface (38) of opening (36). Plays between plate (24) and opening (36) are then suppressed. By determining the position of plate (24), the position of the cutting plane is thus directly and accurately obtained.

Accordingly, the construction of the instrument of the present invention uses flexible blades to improve the accuracy with which we locate a planar surface (i.e., the cutting plane), by using the blades to press the lower surface (25) of our probe against the surface to be located (38).

Neubauer discloses a device for determining the position the position of an incision block. In rejecting the claims, the Examiner contends that Neubauer includes means (figure 1, 24a-b) between the plate and the guide to prevent movement of the instrument when it is inserted in the

opening. These “means” are merely plates that are inserted into the guide slot 1a of the tibial incision block and are more for coupling the two parts together as opposed to preventing movement. Neubauer clearly does not disclose or contemplate using blades to improve the contact between the surfaces and the accuracy of a target surface (cutting plane).

The Examiner acknowledges that Neubauer lacks any compensating means and therefore, looks to Fisher for this teaching. Fisher relates to a totally unrelated technical area in that Fisher is directed to a printed circuit board component mounting device. Applicant first respectfully questions whether one of skill in the art would look toward electrical equipment and connector teaching for the missing element in Neubauer since Neubauer relates to cutting plane positioning similar to the present invention.

Fisher teaches an improved mounting mechanism play compensation means and at least three bent flexible blades provided to bear against a surface of the opening and a complimentary surface to provide an improved fitting grip while still allowing easy dismounting of the parts. In Fisher, the blades are simply for improving the fitting grip of two parts (i.e., to prevent one part from becoming dismounted from another part), and nowhere does Fisher describe the intention improving the accuracy in locating a planar surface, by pushing one planar surface up against the other planar surface as is the case in the present claims. Fig. 4b of Fisher is shown below:

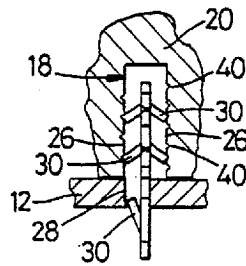


Fig. 4(b)

Claim 1 has been amended to recite a position locating instrument (10) for accurately determining the location of a cutting plane. The instrument includes a base (11) connected to means (12) capable of determining the position of the instrument. The instrument also includes a plate (24) moving along with the base for insertion into an opening (36) of a bone cutting guide (37), and resilient means for compensating for the play between the plate and the guide to prevent a movement of the instrument when it is inserted in the opening. The resilient means extends *outwardly along only one face of the plate (24) to cause one planar surface of the base (11) to lie flush against one planar surface that defines the opening (36).*

As shown in Fig 4(b), Fisher teaches that the spades 30 extend along *two* faces of the head portion 16 of the device 10. The spades 30 extend outwardly from two opposing faces of the head portion 16 in order to locate and retain the spades 30 in the opening (slot 18) of the component 20. Applicant respectfully submits that the spades 30 cannot extend only along one face of the head portion since this would result in the head portion not being retained in the slot 18 (contrary to the teachings of Fisher).

Based on the foregoing, Applicant respectfully submits that claim 11, as amended, is neither disclosed nor suggested by the cited references, taken alone or in combination. Reconsideration and allowance of amended claim 11 are in order.

Claims 12-16 and 18-21 should be allowed as depending from what should an allowed independent claim 11, as amended.

Claim 22 is a new independent claim that is directed to a system for accurately determining a location of a cutting plane to permit a bone cutting operation to be performed. The system includes a bone-cutting guide (37) having an opening (36) in which a cutting blade is inserted, where the opening (36) has a first surface (39) and an opposing second surface (38). In addition, the system includes a position locating instrument (10) for accurately determining the location of the cutting plane. The instrument includes a base (11) connected to means (12) capable of determining the position of the instrument and a plate (24) moving along with the base for insertion into the opening (36) of the bone cutting guide (37). The plate (24) has a first face and an opposing second face, and resilient means for compensating for the play between the plate and the guide to prevent a movement of the instrument when it is inserted in the opening (36) of the bone cutting guide (37). The resilient means has a plurality of flexible blades extending outwardly along only the first face of the plate and bearing against the surface (39) of the opening (36) to thereby accurately locate the cutting plane by maintaining the second face of the plate (24) in contact against the second surface (38) of the opening (36).

Applicant respectfully submits that the combined references fail to disclose or suggest the above-recited system in which the base includes flexible blades extending outwardly along only the first face of the plate and bearing against the surface (39) of the opening (36) to thereby accurately

locate the cutting plane by maintaining the second face of the plate (24) in contact against the second surface (38) of the opening (36).

Claim 22 further recites that the second face is in contact against the second surface at a location of the plate where *all* of the blades are formed and are bearing against the opposite first surface (39).

Consideration and allowance of claim 22 are earnestly solicited at this time.

Applicant believes that the present communication is fully responsive and addresses each issue raised by the Examiner in the Office Action.

In view of the above amendment, Applicant believes the pending application is in condition for allowance.

It is believed that no fees are due or all fees have been paid; however, if the Patent Office believes that additional fees are due, the Patent Office is authorized to charge Deposit Account No. 50-4570 up to \$800.00.

Dated: April 23, 2009

Respectfully submitted,

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